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argument. The bankrupt Act of 1800 provided particularly for secured creditors, — the Act of 1841 omitted that provision yet the practice under it was the same. And more, the argument regarding set-off, *Scott v. Armstrong supra*, is nullified by the fact that set-off was allowed under all these statutes, which like the National Banking Act contained no provision in regard to it.

Although the wording of the bankruptcy statutes was not precisely the same, in the face of the unbroken course of judicial interpretation the decision of the principal case seems wrong. It was pointed out that all these statutes dealt with bankruptcy. That tends to weaken the argument, but it still seems conclusive; it is not apparent why bankruptcy statutes stand on any peculiar ground.

Mr. Justice White — Mr. Justice Harlan, and Mr. Justice McKenna concurring — urged also another line of argument: that, granting that the National Banking Act did not apply, still equity in making its distribution should follow the “bankruptcy rule” in analogy with the statutory provisions and to secure uniformity. It seems that the majority had much the better of this branch of the case. It is hard to see why on the merits the “bankruptcy rule” is the juster of the two, — why should not the secured creditor get the full advantage of his diligence and hold the security entirely apart from his legal claim? At best there is no great preference between the rules. And it is quite clear that the equity which the Supreme Court is to administer, as they have repeatedly declared, is to be founded on the principles of the Courts of Chancery, not to be dependent on valuable statutes. The court might be guided by them in contriving some new method of administration, hardly to alter an old one, and even in America the “chancery rule” of distributing the assets without regard to the securities held must be considered the settled equity practice.

ALIENATION OF AFFECTIONS. — Under the common law a married woman was unable to maintain an action against a third person for alienating her husband's affections; that could hardly be said to have been an unjust discrimination against the wife, for there were two decisive — though somewhat technical — reasons for the doctrine. In the first place the husband would have been required to bring the action and was himself *in pari delicto*, as it were; and secondly the damages recovered would have become his property. It is evident that neither of these reasons apply under our modern statutes enlarging the rights of married women, yet the wife was denied such an action by the Supreme Court of Maine in *Morgan v. Martin*, 42 Atl. Rep. 354 (Me.). The court recognized that there were no technical difficulties in the way of the suit and based their decision on grounds of policy. The wife has an adequate remedy in divorce, and such actions “seem to be better calculated to inflict pain upon the innocent members of the families of the parties than to secure redress to the persons injured.” This reasoning, however, does not seem convincing. It puts the burden of the wrong on the husband who may, in some cases, be a comparatively innocent party. And it may well be doubted if divorce would be in many cases either an adequate or a desirable remedy. It would be attended with equally painful consequences to the families of the parties, especially if there were children, with the lamentable result that a substantial injury would often go unredressed. Such seems to be

the opinion of many of the courts; the woman's side of the question is ably presented in *Warren v. Warren*, 89 Mich. 123.

It will be noticed that a parity or reasoning would deny such an action to the husband also, and the Maine Court intimates very consistently, that such is their opinion. But there is absolutely no authority for such a view which seems wholly indefensible. In the husband's case it is clear that divorce would be a totally inadequate and undesirable remedy. Even where the conduct of the wife would be sufficient grounds for separation—which is improbable, even in many cases where the husband has suffered substantial damage—we have the extraordinary result that the sole resource of an injured husband is to put himself into a position where a second injury is impossible, no matter how undesirable to him such a change may be,—the wife bears the whole burden of the wrong, and the true wrongdoer escaping absolutely free! It may be well doubted if any court of to-day would reach such a conclusion. But these reasons apply equally, though perhaps not so strongly, to the woman's case. And this discrimination between the husband and the wife, wholly unjust and contrary to the spirit of all our recent legislation, should fall now with the technical reasons for its existence.

DEFENCES IN STATUTORY CRIMES. — It is a disputed question whether the common law ingredient of intent is necessary in a crime, the origin of which is purely statutory. That each criminal enactment is a direct repeal of the common law on its particular subject, and that the offence is complete if the bare words of the statute are satisfied, is one prevailing view. Another theory is that such legislative interference is not a repeal, but merely a modification of the common law to the extent of the words of the enactment. All defences, then, which were good before it was passed are to be regarded as still effectual, unless the words of the statute expressly negative their application. Between these two extreme views there is a middle one which commends itself as a convenient rule. To certain offences, such as police regulations, in their nature mere torts against the State, to a conviction of which no moral obloquy attaches, intent may well be considered irrelevant. 12 HARVARD LAW REVIEW, 568. But to the more serious statutory offences justice requires that a defendant may plead successfully all defences not expressly negatived by the legislature. *Regina v. Tolson*, 23 Q. B. D. 168. And in such a grave statutory crime as bigamy the defendant should be able, as at common law, to avail himself of a mistake of fact, but by an inflexible rule could take no advantage of a mistake of law.

The Supreme Court of Arkansas have overlooked this view of practical justice in the recent case of *Russell v. State*, 49 S. W. Rep. (Ark.). To an indictment for bigamy under the usual statute the defendant pleaded that he acted in the *bona fide* belief that he had been divorced from his first wife. He claimed that he had paid an attorney money to secure a separation, and had received through fraud a void certificate of the annulment of the marriage. The court, in holding that this evidence was properly excluded below, drew no distinction between a mistake of law and a mistake of fact. They evidently went to the extreme of saying that if the words of the statute are satisfied the defendant was guilty. Whether the result they reach is to be commended depends on the ques-